प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद –380009.
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DIN No. **20250371MN000000C640**

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-178/SVPIA-C/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-178/SVPIA-C/O&A/HQ/2024-25 dated: 09.08.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**281/ADC/SRV/O&A/2024-25**
D	आदेशतिथि/ Date of Order-In-Original	:	**19.03.2025**
E	जारीकरनेकीतारीख/ Date of Issue	:	**19.03.2025**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi**, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	**Smt. Nasrinbanu Mahmmad Akbar,** 301, Satyu Palace, Jagan Park, Custom Road Chala, Vapi, Valsad – 396191.
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the case: -

Smt. Nasrinbanu Mahmmad Akbar, holding Indian Passport No. U8328449, DOB: 18.09.1985 (hereinafter referred to as the said "passenger/ Noticee"), residential address as per passport is 301, Satyu Palace, Jagan Park, Custom Road Chala, Vapi, Valsad – 396191, arrived by Indigo Flight No. 6E 76 from Jeddah to Ahmedabad on 02.04.2024 at Sardar Vallabhbhai Patel International Airport (SVPIA), Terminal-2, Ahmedabad. On the basis of DRI AZU Intelligence, the passenger was intercepted by the officers of DRI AZU and Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad while the passenger was attempting to exit through green channel without making any declaration to Customs, under Panchnama proceedings dated 02.04.2024 in presence of two independent witnesses for passenger's personal search and examination of her baggage.

2. The officers asked the passenger whether she was carrying any contraband/ dutiable goods in person or in baggage to which she denied. The officers informed the passenger that they would be conducting her personal search and detailed examination of her baggage. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether she wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave her consent to be searched in presence of the Superintendent of Customs. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects she was wearing on her body/ clothes. Thereafter the passenger, removed the metallic substances from her body such as mobile, purse etc., and kept it in a tray placed on the table there and after that she was asked to pass through the Door Frame Metal Detector (DFMD) machine and while she passed through the DFMD Machine, no beep sound was heard indicating that nothing objectionable/dutiable was on her body/clothes. Further, the AIU officers asked the passenger to keep her baggage into X-Ray Baggage Scanning Machine installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad. The passenger kept her baggage into X-Ray Baggage Scanning Machine for scanning but no suspicious image appeared on the screen of the X-Ray machine.

Thereafter, the officers of AIU along with the passenger and the Panchas moved to the AIU office located opposite Belt No. 2 of the Arrival Hall, Terminal-2, SVPI Airport, Ahmedabad along with the baggage of the passenger. The passenger Smt. Nasrinbanu Mahmmad Akbar is examined thoroughly by the Lady AIU officer. The Lady AIU officer asks the said passenger to change all her clothes. During examination of her clothes, the lady officer finds that the underwear which is worn by the passenger is unusually heavy. On further examination it is found that the said underwear at the bottom has two layers stitched on both the sides. The lady officer in presence of the panchas and the passenger, cut opens the stitched layer of the said underwear wherein a plastic pouch consisting of yellow paste like substance is found. On being asked, the passenger tells the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix.

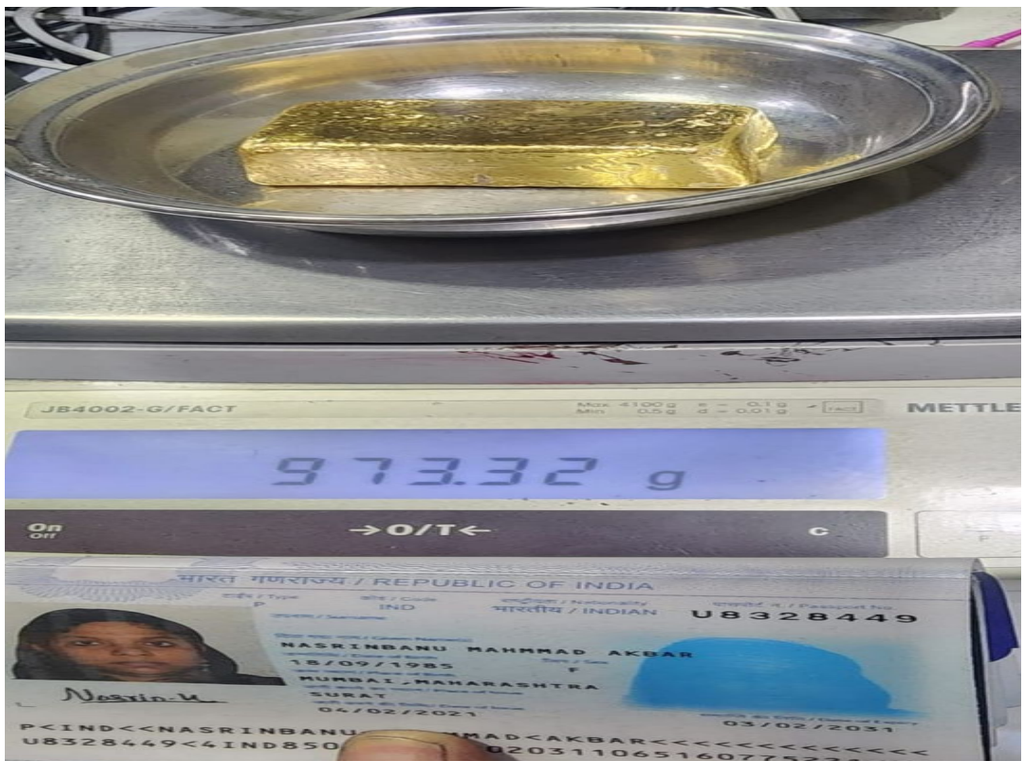
2.1 The officers informed the panchas that the pouch recovered from the underwear of Smt. Nasrinbanu Mahmmad Akbar contains semi solid substance comprising of gold and chemical mix, which required to be confirmed and also to be ascertained its purity and weight. For the same, Shri Kartikey Vasantrai Soni, the Government Approved Valuer was contacted, who informed that the facility to extract the gold from such semi solid substance comprising of gold and chemical mix and to ascertain purity and weight of the same, is available at his shop only. Accordingly, the officers, the panchas and the passenger visited his shop situated at 301, Golden Signature, Behind Ratnam Complex, Nr. National Handloom, C.G. Road, Ahmedabad-380006 in Government vehicle. Shri Kartikey Vasantrai Soni, the Government Approved Valuer weighed the said pouch of semi solid substance comprising of gold and chemical mix on his weighing scale and informed that it was weighing 1105.24 grams. The photograph of the same is as under:

2.2 Thereafter, the Government approved valuer Shri Kartikey Vasantrai Soni started the process of converting the said semi solid substances into solid gold. After completion of the procedure, Government Approved Valuer informed that 1 Gold bar weighing **973.320** grams having purity 999.0/24 Kt. is derived from the 1105.240 grams of semi solid substance containing gold paste and chemical mix concealed in plastic pouches in the underwear of the passenger. After testing the said bar, the Government Approved Valuer confirms that it is pure gold. Shri Soni Kartikey Vasantrai vide certificate no. 007/2024-25 dated 02.04.2024 certified that the extracted gold bar is having purity 999.0/24kt, tariff value of **Rs.57,72,177/-** and Market value of **Rs.69,34,905/-**. The value of the gold bar has been calculated as per the Notification No. 25/2024-Customs (N.T.) dated 28.03.2024 (gold) and Notification No. 24/2024-Customs (N.T.) dated 26.03.2024 (exchange rate).

2.3 The method of purifying, testing and valuation used by Shri Kartikey Vasantrai Soni was done in presence of the independent panchas, the passenger and the officers. All were satisfied and agreed with the testing and Valuation Certificate given by Shri Kartikey Vasantrai Soni and in token of the same, the Panchas and the passenger put their dated signature on the said valuation certificates. On being asked by the AIU officer, in the presence of the panchas, the passenger produces the following documents :

(i) Copy of Stamped pages of Passport No. U8328449 issued at Surat 04.02.2021 valid up to 03.02.20231.
(ii) Boarding pass dated 02.04.2024 showing seat no. 38F of Flight No. 6E 76 from Jeddah to Ahmedabad.

The photograph of the extracted gold bar is as under:



3. Accordingly, gold bar having purity 999.0/24 Kt. weighing 973.320 grams, derived from the semi solid substance comprising of gold and chemical mix recovered from the said passenger was seized vide Panchnama dated 02.04.2024, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was attempted to smuggle into India by the said passenger with an intention to evade payment of Custom duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

4. A statement of Smt. Nasrinbanu Mahmmad Akbar was recorded on 02.04.2024, under Section 108 of the Customs Act, 1962, wherein she *inter alia* stated that –

(i) she works as a cook in Umrah Tour;

(ii) she went to Jeddah on 02.02.2024 and returned back on 02.04.2024 by Indigo Flight No. 6E 76 to Ahmedabad; that she had never indulged in any smuggling activity in the past and this was first time she had carried gold;

(iii) One friend told her to deliver the said gold paste to a person in Ahmedabad who in return would give her Rs. 20,000/-; her friend advised to conceal the gold in form of semi-solid gold

paste with chemical mix in clothes so that it cannot be found during check at Airport;

(iv) she had been present during the entire course of the Panchnama dated 02.04.2024 and she confirmed the events narrated in the said panchnama at Terminal-2, SVPI Airport, Ahmedabad;

(v) she is aware that smuggling of gold without payment of Custom duty is an offence; she is well aware of the gold concealed in underwear containing gold and chemical mix in semi-solid paste form but she did not make any declarations in this regard with an intention to smuggle the same without payment of Custom duty.

5. The above said gold bar weighing 973.320 grams recovered from Smt. Nasrinbanu Mahmmad Akbar, was allegedly attempted to be smuggled into India with an intent to evade payment of Customs duty by way of concealing the same in the form of semi solid substance comprising of gold and chemical mix, which is clear violation of the provisions of the Customs Act, 1962. Thus, on a reasonable belief that the gold bar weighing 973.320 grams is attempted to be smuggled by the said passenger, liable for confiscation as per the provisions of Section 111 of the Customs Act, 1962. Hence, the above said gold bar weighing 973.320 grams derived from the above said semi solid gold paste with chemical mix, was placed under seizure under the provision of Section 110 and Section 119 of the Customs Act, 1962 vide Seizure memo Order dated 02.04.2024.

6. Further, in terms of Board's Circular No. 28/2015-Customs issued from F. No. 394/68/2013-Cus (AS) dtd. 23.10.2015 and 27/2015-Cus issued from F. No. 394/68/2013-Cus (AS) dtd. 23.10.2015 as revised vide Circular No. 13/2022-Customs, dated 16.08.2022 the prosecution and the decision to arrest may be considered in cases involving outright smuggling of high value goods such as precious metal, restricted items or prohibited items where the value of the goods involved is Rs.50,00,000/- (Rupees Fifty Lakhs) or more. Since the market value of gold recovered from the said passenger, is Rs.69,34,905/- which is more than Rs.50,00,000/-. Hence, she was arrested on 02.04.2024 and Bail bond amount Rs.1,00,000/- paid by her vide Foil No. 39773 dtd. 02.04.2024 to release, as the offence is

bailable under provision of Section 104 (6) & (7) of the Customs Act, 1962.

7. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions. *—In this Act, unless the context otherwise requires, —*

(22) "goods" includes-
(a) vessels, aircrafts and vehicles;
(b) stores;
(c) baggage;
(d) currency and negotiable instruments; and
(d) any other kind of movable property;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"

II) Section11A – Definitions *-In this Chapter, unless the context otherwise requires,*

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) Section 77 – Declaration by owner of baggage. *— The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."*

IV) Section 79. Bona fide baggage exempted from duty. -
(1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty –

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has

been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

V) Section 110 – Seizure of goods, documents and things.— *(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"*

VI) Section 111 – Confiscation of improperly imported goods, etc.–*The following goods brought from a place outside India shall be liable to confiscation:-*

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;
(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"

VII) Section 112 – Penalty for improper importation of goods, etc.– *Any person, -*

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing

with any goods which he know or has reason to believe are liable to confiscation under Section 111,
shall be liable to penalty.

VII) Section 119 – Confiscation of goods used for concealing smuggled goods–*Any goods used for concealing smuggled goods shall also be liable to confiscation."*

B. <u>THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992;</u>

I) Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."*

II) Section 3(3) - *All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."*

III) Section 11(1) - *No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."*

C. <u>THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:</u>

I) Regulation 3 (as amended) - *All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.*

<u>CONTRAVENTION AND VIOLATION OF LAWS</u>

8. It therefore appears that:

(a) The passenger Smt. Nasrinbanu Mahmmad Akbar had dealt with and knowingly indulged himself in the instant case of smuggling of gold into India. The passenger had improperly imported gold weighing 973.320 grams having purity 999.0/ 24kt, Tariff value of Rs.57,72,177/- and Market value of Rs.69,34,905/-. The said semi solid gold paste was containing gold and chemical mix and not declared to the Customs. The passenger opted green channel to exit the Airport with deliberate intention to evade the payment of Customs Duty and fraudulently circumventing the restrictions and

prohibitions imposed under the Customs Act, 1962 and other allied Acts, Rules and Regulations. Thus, the element of *mens rea* appears to have been established beyond doubt. Therefore, the improperly imported gold bar weighing 973.320 grams of purity 999.0/24 Kt. by Smt. Nasrinbanu Mahmmad Akbar by way of concealment and without declaring it to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

(b) By not declaring the value, quantity and description of the goods imported by her, the said passenger violated the provision of Baggage Rules, 2016, read with the Section 77 of the Customs Act, 1962 read with Regulation 3 of the Customs Baggage Declaration Regulations, 2013.

(c) The improperly imported gold by the passenger, without declaring it to the Customs is thus liable for confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) read with Section 2 (22), (33), (39) of the Customs Act, 1962 and further read in conjunction with Section 11(3) of Customs Act, 1962.

(d) As per Section 119 of the Customs Act, 1962 any goods used for concealing smuggled goods shall also be liable for confiscation.

(e) Smt. Nasrinbanu Mahmmad Akbar by her above-described acts of omission and commission on her part has rendered herself liable to penalty under Section 112 of the Customs Act, 1962.

(f) As per Section 123 of the Customs Act, 1962, the burden of proving that the gold bar weighing 973.320 grams having purity 999.0/24kt, derived from semi solid gold paste without

declaring it to the Customs, is not smuggled goods, is upon the passenger and the Noticee.

09. Accordingly, a Show Cause Notice was issued to **Smt. Nasrinbanu Mahmmad Akbar**, holding Indian Passport No. U8328449, DOB: 18.09.1985, residential address as per passport is 301, Satyu Palace, Jagan Park, Custom Road Chala, Vapi, Valsad – 396191, as to why:

(i) One Gold Bar weighing **973.320** grams having purity 999.0/24kt, Tariff value of **Rs.57,72,177/-** and Market value of **Rs.69,34,905/-**, derived from semi solid gold paste concealed in a pouch in the underwear worn by the passenger and placed under seizure under panchnama proceedings dated 02.04.2024 and Seizure Memo Order dated 02.04.2024, should not be confiscated under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

(ii) Penalty should not be imposed upon the passenger, under Section 112 of the Customs Act, 1962, for the omissions and commissions mentioned hereinabove.

Defense reply and record of personal hearing:

10. The noticee has not submitted any written submission to the Show Cause Notice issued to him.

11. The noticee was given opportunity for personal hearing on 20.01.2025, 07.02.2025 & 18.02.2025 but she failed to appear and represent her case. In the instant case, the noticee has been granted sufficient opportunity of being heard in person for three times but she failed to appear. In view of above, it is obvious that the Noticee is not bothered about the ongoing adjudication proceedings and she do not have anything to say in her defense. I am of the opinion that sufficient opportunities have been offered to the Noticee in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely.

11.1 Before, proceeding further, I would like to mention that Hon'ble Supreme Court, High Courts and Tribunals have held, in several

judgments/decision, that ex-parte decision will not amount to violation of principles of Natural Justice.

In support of the same, I rely upon some the relevant judgments/orders which are as under-

a) The Hon'ble Supreme Court in the matter of JETHMAL Versus UNION OF INDIA reported in 1999 (110) E.L.T. 379 (S.C.), the Hon'ble Court has observed as under;

> *"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."*

b). Hon'ble High Court of Kerala in the case of UNITED OIL MILLS Vs. COLLECTOR OF CUSTOMS & C. EX., COCHIN reported in 2000 (124) E.L.T. 53 (Ker.), the Hon'ble Court has observed that;

> *Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.*

c) Hon'ble High Court of Calcutta in the case of KUMAR JAGDISH CH. SINHA Vs. COLLECTOR OF CENTRAL EXCISE, CALCUTTA reported in 2000 (124) E.L.T. 118 (Cal.) in Civil Rule No. 128 (W) of 1961, decided on 13-9-1963, the Hon'ble court has observed that;

Natural justice - Show cause notice - Hearing - Demand - Principles of natural justice not violated when, before making the levy under Rule 9 of Central Excise Rules, 1944, the Noticee was issued a show cause notice, his reply considered, and he was also given a personal hearing in support of his reply - Section 33 of Central Excises & Salt Act, 1944. - It has been established both in England and in India [vide N.P.T. Co. v. N.S.T. Co. (1957) S.C.R. 98 (106)], that there is no universal code of natural justice and that the nature of hearing required would depend, inter alia, upon the provisions of the statute and the rules made there under which govern the constitution of a particular body. It has also been established that where the relevant statute is silent, what is required is a minimal level of hearing, namely, that the statutory authority must 'act in good faith and fairly listen to both sides' [Board of Education v. Rice, (1911) A.C. 179] and, "deal with the question referred to them without bias, and give to each of the parties the opportunity of adequately presenting the case" [Local Govt. Board v. Arlidge, (1915) A.C. 120 (132)]. [para 16]

d) Hon'ble High Court of Delhi in the case of SAKETH INDIA LIMITED Vs. UNION OF INDIA reported in 2002 (143) E.L.T. 274 (Del.). The Hon'ble Court has observed that:

Natural justice - Ex parte order by DGFT - EXIM Policy - Proper opportunity given to appellant to reply to show cause notice issued by Addl. DGFT and to make oral submissions, if any, but opportunity not availed by appellant - Principles of natural justice not violated by Additional DGFT in passing ex parte order - Para 2.8(c) of Export-Import Policy 1992-97 - Section 5 of Foreign Trade (Development and Regulation) Act, 1992.

e) The Hon'ble CESTAT, Mumbai in the case of GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II reported in 2004 (171) E.L.T. 412 (Tri. – Mumbai), the Hon'ble CESTAT has observed that;

Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]

f). The Hon'ble High Court of Jharkhand in W.P.(T) No. 1617 of 2023 in case of Rajeev Kumar Vs. The Principal Commissioner of Central Goods and Service Tax & The Additional Commissioner of Central GST & CX, 5A Central Revenue Building, Main Road, Ranchi pronounced on 12.09.2023 wherein Hon'ble Court has held that

"Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date of personal hearing for four times; but the petitioner did not respond to either of them.

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable.

9. As a result, the instant application stands dismissed. Pending I.A., if any, is also closed."

Discussion and Findings:

12. I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file her reply/ submissions or to appear for the personal hearing opportunities offered to her. The adjudication proceedings cannot wait until the Noticee makes it convenient to file her submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

13. In the instant case, I find that the main issue to be decided is whether the **973.320 grams** of 01 gold bar, derived from semi solid gold paste concealed in a pouch in the underwear, having tariff value of **Rs.57,72,177/-** and market value is **Rs.69,34,905/**-, seized vide Seizure Memo/Order under Panchnama proceedings both dated 02.04.2024, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the noticee is liable for penal action under the provisions of Section 112 of the Act.

14. I find that the panchnama dated 02.04.2024 clearly draws out the fact that the noticee, who arrived from Jeddah in Flight No. 6E 76 was intercepted by the Air Intelligent Unit (AIU) officers, SVP International Airport, Customs, Ahmedabad on the basis of intelligence of DRI, the passenger was intercepted by the Air Intelligence Unit (AIU) officers, SVPIA, Customs, Ahmedabad and DRI officers, while noticee was attempting to exit through green channel without making any declaration to the Customs. While the noticee passed through the Door Frame Metal Detector (DFMD) Machine no beep sound was heard which indicated there was no objectionable/dutiable substance on her body/clothes. Further, the AIU officers asked the passenger to keep her baggage into X-Ray Baggage Scanning Machine installed near the Green Channel counter at terminal 2 of SVPI Ahmedabad. The passenger kept her baggage into X-Ray Baggage Scanning Machine for scanning but no suspicious image appeared on the screen of the X-Ray machine. The passenger Smt. Nasrinbanu Mahmmad Akbar is examined thoroughly by the Lady AIU officer. The Lady AIU officer asks the said passenger to change all her clothes. During examination of her clothes, the lady officer finds that the underwear which is worn by the passenger is unusually heavy. On further examination it is found that the said underwear at the bottom has two layers stitched on both the sides. The lady officer in presence of the panchas and the passenger, cut opens the stitched layer of the said underwear wherein a plastic pouch consisting of yellow paste like substance is found. On being asked, the passenger told the officer that the said yellow paste like substance is a semi solid paste of gold and chemical mix.

14.1 It is also on the record that the Government Approved valuer Shri Kartikey Vasantrai Soni examined the pouch containing mixture of gold and chemicals mix recovered from Smt. Nasrinbanu Mahmmad Akbar. After weighing the said pouch of gold and chemical mix on his weighing scale, Mr. kartikey Vasantrai Soni informed that the Gross weight comes 1105.24 grams and after completion of the extraction process, the Government Approved Valuer Shri Kartikey Vasantrai Soni informed that one gold bar total weighing **973.320 grams** having purity of 999.00 (24Kt.) derived from the said gold and chemical mix paste and submitted his valuation report vide certificate No. 007/2024-25 dated 02.04.2024, wherein he mentioned that the

total Market Value of the said recovered gold is **Rs.69,34,905/- (Rupees Sixty Nine Lakhs Thirty Four Thousand Nine Hundred Five only) and Tariff Value is Rs.57,72,177/- (Rupees Fifty Seven Lakhs Seventy Two Thousand One Hundred Seventy Seven Only)**. The value of the gold bar has been calculated as per the Notification No. 25/2024-Customs (N.T.) dated 28.03.2024 (gold) and Notification No. 24/2024-Customs (N.T.) dated 26.03.2024 (exchange rate).

15. I also find that the passenger/noticee had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of her statement. Every procedure conducted during the panchnama by the Officers, was well documented and made in the presence of the panchas as well as the passenger/noticee. In fact, in her statement dated 02.04.2024, she has clearly admitted that she had travelled from Jeddah to Ahmedabad by Flight No. 6E-76 dated 02.04.2024 carrying the gold in paste form concealed in underwear. She admitted that the said gold was not her and also not purchased by her and someone has handed over the same at Jeddah and asked to deliver the same at Ahmedabad and for that she would get Rs. 20,000/-. Further, she mentioned that she had intentionally not declared the substance containing foreign origin gold before the Customs authorities as she wanted to clear the same illicitly and evade payment of customs duty; that she was aware that smuggling of gold without payment of customs duty is an offence under the Customs law and thereby, violated provisions of Customs Act, 1962 and the Baggage Rules, 2016.

16. I find that the noticee has clearly accepted that she had not declared the said gold bar (derived from gold paste in pouch concealed in underwear), to the Customs authorities. It is clear case of non-declaration with intent to smuggle the gold. Accordingly, there is sufficient evidence to conclude that the passenger had failed to declare the foreign origin gold before the Customs Authorities on her arrival at SVP International Airport, Ahmedabad. Therefore, it is a case of smuggling of gold without declaring in the aforesaid manner with intent to evade payment of Customs duty is conclusively proved. Thus, it is proved that passenger violated Section 77, Section 79 of the Customs Act for import/smuggling of gold which was not for bonafide use and

thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

17. From the facts discussed above, it is evident that the passenger/noticee had brought gold of 24 kt having 999.0 purity weighing 973.320 gms., retrieved/derived from gold paste concealed in underwear, while arriving from Jeddah to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the gold weighing 973.320 gms., seized under panchnama dated 02.04.2024 liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By secreting/hiding the gold in form of gold paste concealed in underwear and not declaring the same before the Customs, it is established that the passenger/noticee had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

18. It is seen that for the purpose of customs clearance of arriving passengers, a two-channel system is prescribed/adopted i.e Green Channel for passengers not having dutiable goods and Red Channel for passengers having dutiable goods and all passengers have to ensure to file correct declaration of their baggage. *I find that the Noticee had not filed the baggage declaration form and had not declared the said gold which was in her possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013 as amended* and she was tried to exit through Green Channel which shows that the noticee was trying to evade the payment of eligible customs duty. I also find that the definition of "eligible passenger" is provided under Notification No. 50/2017- Customs New Delhi, the 30th June, 2017 wherein it is mentioned as - *"eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act,*

1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days. I find that the noticee has not declared the gold before customs authority. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 973.320 grams concealed by her, without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The noticee has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

19. It, is therefore, proved that by the above acts of contravention, the passenger/noticee has rendered gold of 24 kt having 999.0 purity weighing 973.320 gms., retrieved/derived from gold paste concealed in underwear, having total Tariff Value of Rs.57,72,177/- and market Value of Rs.69,34,905/-,seized vide Seizure Memo/Order under the Panchnama proceedings both dated 02.04.2024 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of concealing in the form of gold paste concealed in underwear and without declaring to the Customs on arrival in India, it is observed that the passenger/noticee was fully aware that the import of said goods is offending in nature. It is therefore very clear that she has knowingly carried the gold and failed to declare the same to the Customs on his arrival at the Airport. It is seen that she has involved herself in **carrying, keeping, concealing and dealing with the impugned goods in a manner which she knew or had reasons to believe that the same were liable to confiscation under the Act**. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

20. I find that the passenger/noticee has confessed of carrying gold of 24 kt having 999.0 purity, weighing 973.320 grams and attempted to remove the said gold by concealing in form of gold paste, in underwear and attempted to remove the said gold from the Customs Airport without declaring it to the Customs Authorities violating the para 2.26

of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

21. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The records before me shows that the passenger/noticee did not choose to declare the prohibited/dutiable goods and opted for green channel customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. One gold bar weighing 973.320 grams of 24Kt./ 999.0 purity, having total Market Value of the recovered gold bar Rs.69,34,905/- and Tariff Value Rs.57,72,177/- retrieved/ derived from gold paste concealed in underwear, were placed under seizure vide panchnama dated 02.04.2024. The passenger/noticee has clearly admitted that despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made thereunder, she attempted to remove the gold by concealing in the form of gold paste, in underwear and by deliberately not declaring the same on his arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger/noticee has committed an offence of the nature described in Section 112(a) & Section 112(b) of Customs Act, 1962 making her liable for penalty under provisions of Section 112 of the Customs Act, 1962.

22. I further find that gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon'ble Supreme Court in the case of Om Prakash Bhatia** however in very

clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfillment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger trying to smuggle the same was not eligible passenger to bring or import gold into India in baggage. The gold was recovered in a manner concealed in form of gold paste, in underwear and kept undeclared with an intention to smuggle the same and evade payment of customs duty. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

23. In view of the above discussions, I hold that the gold weighing 973.320 grams of 24Kt./999.0 purity, retrieved/derived from gold and chemical mix concealed in underwear and undeclared by the passenger/noticee with an intention to clear the same illicitly from Customs Airport and to evade payment of Customs duty, are liable for absolute confiscation. Further, it becomes very clear that the gold was carried to India by the noticee in concealed manner for extraneous consideration. Moreover, in her voluntary statement, she admitted that she had not purchased the said gold and was given by some unknown person to carry the same. Therefore, it is very evident that she was just a carrier of the gold as gold was not belong to her and not purchased by her. Even at any stage from investigation to adjudication, I find that the noticee or even any other person did not come forward to claim the ownership on the seized gold. In the instant case, ***I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act***.

24. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the Hon'ble High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

25. Further I find that in a case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUSin respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under;

"89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra)."

26. The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Vs. P. Sinnasamy [2016 (344) E.L.T. 1154 (Mad.)] has held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified –

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

27. In [2019 (370) E.L.T. 1743 (G.O.I.)], before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary

Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 7-10-2019 in F. No.375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10-5-1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

28. The Hon'ble High Court of Delhi in the matter of Rameshwar Tiwari Vs. Union of India (2024) 17 Centax 261 (Del.) has held-

*"**23.** There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea."*

*24……..***.**

25……..

*"**26.** The Supreme Court of India in State of Maharashtra v. Natwarlal Damodardas Soni [1980] 4 SCC 669/1983 (13) E.L.T. 1620 (SC)/1979 taxmann.com 58 (SC)* ***has held that smuggling particularly of gold, into India affects the public economy and financial stability of the country****."*

29. Given the facts of the present case before me and the judgements and rulings cited above, I find that the manner of concealment, in this case clearly shows that the noticee had attempted to smuggle the seized gold to avoid detection by the Customs Authorities. Further, no evidence has been produced to prove licit import of the seized gold bar. Thus, the noticee has failed to discharge the burden placed on him in terms of Section 123. Further, from the SCN, Panchnama and Statement, I find that the manner of concealment of the gold is **ingenious** in nature, as the noticee concealed the gold in the form of gold paste concealed in underwear, with intention to smuggle the same into India and evade payment of customs duty. Therefore, the gold weighing 973.320 grams of 24Kt./999.0 purity in form of gold bar, retrieved/derived from gold paste concealed in underwear, is therefore, liable to be **confiscated absolutely**. ***I therefore hold in unequivocal***

terms that the gold weighing 973.320 grams of 24Kt./999.0 purity, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Act.

30. I further find that the passenger had involved herself in the act of smuggling of gold weighing 973.320 grams of 24Kt./999.0 purity, retrieved from gold and chemical mix concealed in underwear. Further, it is fact that the passenger/noticee has travelled with gold weighing 973.320 grams of 24Kt./999.0 purity, retrieved from gold paste concealed in underwear, from Jeddah to Ahmedabad despite her knowledge and belief that the gold carried by her is an offence under the provisions of the Customs Act, 1962 and the Regulations made thereunder. Thus, it is clear that the passenger has concerned herself with carrying, removing, keeping, concealing and dealing with the smuggled gold which she knew or had reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger/noticee is liable for penal action under Sections 112 of the Customs Act, 1962 and I hold accordingly.

31. Accordingly, I pass the following Order:

O R D E R

i.) I order **absolute confiscation** of the One gold bar weighing **973.320** grams having Market Value at **Rs.69,34,905/- (Rupees Sixty Nine Lakhs Thirty Four Thousand Nine Hundred Five only) and Tariff Value is Rs.57,72,177/- (Rupees Fifty Seven Lakhs Seventy Two Thousand One Hundred Seventy Seven Only)** derived/retrieved from gold and chemical mix paste in pouch concealed in underwear by the passenger/noticee Smt. Nasrinbanu Mahmmad Akbar and placed under seizure under panchnama dated 02.04.2024 and seizure memo order dated 02.04.2024 under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

ii.) I impose a penalty of **Rs. 17,50,000/-** (Rupees Seventeen Lakh Fifty Thousand Only) on Smt. Nasrinbanu Mahmmad Akbar under the provisions of Section 112(a)(i) and Section 112(b)(i) of the Customs Act 1962.

32. Accordingly, the Show Cause Notice No. VIII/10-178/SVPIA-C/O&A/HQ/2024-25 dated 09.08.2024 stands disposed of.

Signed by
Shree Ram Vishnoi
Date: 19-03-2025 17:29:47

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-178/SVPIA-C/O&A/HQ/2024-25 Date:19.03.2025

DIN: 20250371MN000000C640

By SPEED POST A.D.

To,
Smt. Nasrinbanu Mahmmad Akbar,
301, Satyu Palace, Jagan Park,
Custom Road Chala, Vapi, Valsad – 396191.

Copy to :-

1. The Principal Commissioner of Customs, Ahmedabad.(Kind Attn: RRA Section)
2. The Deputy Commissioner of Customs (AIU), SVPIA, Ahmedabad.
3. The Deputy Commissioner of Customs, SVPIA, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site i.e. http://www.ahmedabadcustoms.gov.in
6. Guard File.